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V.S

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR		ATTORNEY DOCKET NO.
09/139,298	08/25/98	ANDERSON	R	ARM-11206/06

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EXAMINER	
SHERRER, C	
ART UNIT	**PAPER NUMBER**
1761	5

DATE MAILED: 12/30/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/139,298	Anderson
Examiner	**Group Art Unit**
Curtis E. Sherrer	1761

☒ Responsive to communication(s) filed on *Oct 27, 1999*.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-19* is/are pending in the application.

Of the above, claim(s) *12-14* is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-11 and 15-19* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Part III DETAILED ACTION

Election/Restriction

1. Claims 12-14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected apparatus. Election was made **without** traverse in Paper No. 4.

Priority

2. It is noted that this application appears to claim subject matter disclosed in prior copending Application No. 08/940,107, filed 9/29/97. The current status of all nonprovisional parent applications referenced should be included.

Drawings

3. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 112

4. Claims 1-11 and 15-19 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 is indefinite because there is no antecedent basis for the phrase "said mxing apparatus."

6. Claim 9 is considered indefinite because the phrase "for separately baking each said ingredient" does not clearly state that the step includes "separately baking" and therefore, it is not clear if the claim is limited by a baking step.

7. Claim 7 is indefinite because there is no antecedent basis for the phrase "said grain bin storage."

8. Claim 10 is indefinite because there is no antecedent basis for the phrase "said predetermined production time" and "said customer selected delivery time" and "said plurality of recipes" and "the bread mixing apparatus" and "said predetermined delivery time."

9. Claim 15 is indefinite because there is no antecedent basis for the phrase "said the desired recipe," "the electronic interface," and "said mixture of ingredinets."

10. Claim 19 is indefinite becuase the scope of the phrase "fresh" is unknown.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 1-11 and 15-19 are rejected under 35 U.S.C. § 103 as being unpatentable over Litwak (Supermarket Business) or Muskai (PC Magazine) in view Stear (Handbook of Breadmaking Technology).

13. Litwak teaches that which is known concerning software program applications for bakeries. The software is aimed at "the independent baker, and the medium or even the larger-

scale wholesale bakery." (¶ 6) One company, Castle Computer Group, produces software that keeps "a running inventory of all ingredients that are in storage," has "production guides built in that manipulate the recipes," and "historic sales files." The software is modular and "is tailored for their business." Their software does "order entry , production reports, ingredients, scheduling, and labor costs." Another company, Datapax, Inc., has a modular system "can handle anything from costing and analysis to ingredients formulations, gross profit and labor analysis, custom cakes, point-of-sale interfaces, and a forward-order system that gives a projection of sales."

14. Muskai teaches that Deerfield Bakery runs its operations using an IBM PC. Specifically, he quotes "[i]t's natural for commercial programmers to take the applications from large businesses -- that's what they've done" and further the bakery owner had written his own programs. These programs "include those for accounts receivable, bread recipes, cake recipes, and billing for wholesale accounts. "When a customer calls in an order, the information is jotted down and later entered on the computer, where it is sorted by field (name, address, telephone number, type of order, price, and so forth). It is considered that the answering of the phone reads on "a telephonic interface" of Claim 2. The bakery then determines the actual recipe and gives directions on how the machinery is to be operated.

15. These two articles provide the teaching that bakery orders from retail customers can be taken and tracked by computer. They do not teach that these same computers are linked to the machinery for manufacturing the baked items.

16. Stear teaches that Reimelt and Atlas Equipment Co. have worked together to provide custom baking systems "some of which not only control batching of ingredients but also the production line". Further, these systems "are tailor-made, and no two systems are identical

although certain core-elements of software and hardware are the same, e.g., batching control, accuracy checking and optimization." The system can "interpret from an input of the number of finished products required, the appropriate number of ingredient batches." "The complete program of various flours, ingredients and liquids are pre-programmed, automatically weighted and recorded, and the silo contents determined." Figures 46(a)-(g) present several views of the system. (See page 400).

17. On page 402, there is stated "[w]ith production lines getting larger and more specialized in most bakeries, the trend is towards a 'one-stop' collection of raw material, whereby they are weighed together and moved as a batch (Fig. 47(a)-(f)). This system requires a mainframe computer to handle the raw material batching, checking and sequencing operation."

18. Stear, on pages 210 and 211, also teaches the use of automatic traveling proofers and ovens. It is considered that it would have been obvious to one of ordinary skill in the art to use the computer controls as recited above in connection with the automatic traveling proofers and ovens since they are well known to the baking industry and their use inherently reduces the need for manpower, which is the common impetus for computerizing a process line.

19. On page 523 and 524, Stear teaches the production of multi-grain breads where several ground grains are added as part of the recipe. While Stear does not teach the grinding of the grain after the grain has been selected from a storage bin but rather teaches that the grain has already been ground is not considered to be a patentable distinction between the teachings of the reference and the instant invention. It would have been obvious to one of ordinary skill in the art to grind the grain after it has reached the bakery rather than before as taught by Stear since this

is a choice that those in the art make based on the expense of the equipment, the amount of multi-grain bread produced, etc.

20. On page 606, Stear teaches the well known use of "electric multi-deck ovens" that are popular with "the craft-baker, the in store bakery, and the hot-bread shop, owing to its flexibility and ease in operation." "The standard electric multi-deck unit is designed for one-tray oven depth, accommodating 2-3 trays across its width; the number of decks can be varied from 1 up to 6. Electronic temperature control is accurate, with a digital read-out, and top and bottom heat are controlled independently."

21. On page 399, there is disclosed an introduction to the previously disclosed methods of weighing ingredients. Specifically, it states that

> The advantages of electronics for weighing functions can offer a host of applications. In using multi-component weighers, recipes for various types of products can be stored, The dosing of ingredients, and the tempering of dough liquids beforehand, based on any batch size, is no problem for electronics. Errors in calculation, and memory are impossible with a correctly programmed computer. The storage capacity for information means that the computer can be used for the silo, mixing and baking.

22. It would have been obvious to one of ordinary skill in the art to use the computer means of Stear in connection with the computer means of Muskai or Litwak because the prior art as a whole teaches the automation of all bakery functions and therefore those in the art have ample motivation to combine an automated process of receiving and tracking retail bread orders with the actual baking of the bread to decrease the number of employees, increase product consistency, etc.

23. It is noted that it is well established that automating a manual activity is *prima facie* obvious. *In re Venner*, 262 F.2d 91, 120 USPQ 193, 194 (CCPA 1958) (Appellant argued that claims to a permanent mold casting apparatus for molding trunk pistons were allowable over the prior art because the claimed invention combined "old permanent - mold structures together with a timer and solenoid which automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed." The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.).

It is also considered prima facie obvious to scale-up or scale-down well known processes. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955)(Claims directed to a lumber package "of appreciable size and weight requiring handling by a lift truck" where held unpatentable over prior art lumber packages which could be lifted by hand because limitations relating to the size of the package were not sufficient to patentably distinguish over the prior art.); *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976) ("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." 189 USPQ at 148.).

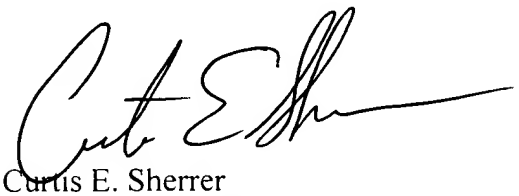
Conclusion

24. No claim is allowed.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tueday through Friday from 6:30 to 4:30.

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703)-308-3535. The **fax phone number** for this Group is (703)-305-3602.

27. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Curtis E. Sherrer
December 30, 1999